RECEIVED

DOCKET FILE COPY ORIGINAL

JUL 14 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	}	
	}	
Implementation of Sections 12 and 19	}	
of the Cable Television Consumer	}	MM Docket No. 92-265
Protection and Competition Act of 1992	}	
	}	
Development of Competition and Diversity	}	
in Video Programming Distribution and	}	
Carriage	}	

STATEMENT OF OPPOSITION OF CONSUMER SATELLITE SYSTEMS, INC. TO PETITIONS FOR RECONSIDERATION

July 12, 1993

Mark C. Ellison
Hardy & Ellison, P.C.
9306 Old Keene Mill Road
Burke, VA 22015

Its Attorney

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	}	
	}	
Implementation of Sections 12 and 19	}	
of the Cable Television Consumer	}	MM Docket No. 92-265
Protection and Competition Act of 1992	}	
	}	
Development of Competition and Diversity	}	
in Video Programming Distribution and	}	
Carriage	}	

STATEMENT OF OPPOSITION TO PETITIONS FOR RECONSIDERATION

Consumer Satellite Systems, Inc. d/b/a National Programming Service ("CSS"), pursuant to Section 1.429 of the Commission's rules, hereby files this Opposition to the

[redacted]

The Commission has acted correctly in applying the rules on a prospective basis to all existing contracts. If any one thing is clear from the Act and the record, it is that Congress was deeply concerned about the rampant discrimination extant in the program licensing market. Congress did not intend to grandfather existing contracts and thereby delay the application of the remedy to discrimination for years hence.

B. THE COMMISSION ACTED CORRECTLY IN APPLYING THE RULES AGAINST A VERTICALLY INTEGRATED PROGRAMMING VENDOR IRRESPECTIVE OF WHERE DISCRIMINATION OCCURS.

TWE argues that the rules should be applicable only within markets where the programming vendor is in fact vertically integrated - "i.e. , where it holds an attributable

intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities based competition to cable and extending programming to areas not served by cable. (Conference Report at p. 74 - emphasis added.)

It is clear from the foregoing that Congress did not intend to limit the Act to areas where non-cable technologies are competing with the vertically integrated cable operators. According to the logic argued by TWE, a programming vendor could not be held accountable for its refusal to deal with an MMDS or HTVRO distributor in an area not served by cable since such refusal would have not have occurred in a market where the MVPD is competing with the programming vendor's affiliated cable system. Such logic flies in the face of the clear purpose of the Act and the Conference Report.

II. OPPOSITION TO PETITION FOR CLARIFICATION AND RECONSIDERATION OF DISCOVERY COMMUNICATIONS, INC.

A. THE COMMISSION SHOULD NOT ESTABLISH ANY ADDITIONAL BURDENS FOR AN MVPD TO BRING A COMPLAINT WITH RESPECT TO AN EXISTING CONTRACT.

In the Petition for Clarification and Reconsideration submitted by Discovery Communications, Inc. ("Discovery") it is requested that the Commission permit the reformation only of those contracts that "significantly harm the distributor's ability to compete in the marketplace." CSS would submit that the Act and the rules as promulgated by the Commission presently contain sufficient protection for programming distributors to avoid the reformation of contracts where there is no discrimination or where there is justification for the discrimination. To establish a new jurisdictional threshold and require a showing of "significant harm" would establish criteria not envisioned by Congress and would place an insurmountable burden on the Commission in trying to determine which claims do and do not meet the burden. Regardless of whether a contract is new or existing, if the prices, terms and/or conditions merit a complaint by an MVPD under the Act, that MVPD should be permitted to seek reformation and relief.

B. THE COMMISSION SHOULD NOT EXCLUDE EDUCATIONAL OR INFORMATIONAL PROGRAMMING FROM THE RULES.

Discovery has asked the Commission to craft an exemption from the mandates of the Act for educational/informational programming. While Discovery claims that it has dealt with all technologies in an evenhanded manner, the fact is that the exemption of educational/informational would ultimately protect its distributors from unwanted competition. If programming is truly of an educational nature and for the benefit of the public, the goal of the Commission should be to assure its broadest distribution through competing technologies. The underlying argument put forth by Discovery is that cable distributors may not invest in new programming unless they can be given exclusive distribution. Regardless of any funding issues, any steps which limit (or potentially limit) the scope of distribution based upon programming content are contrary to the congressional purpose. In the event the Commission should elect to exclude educational

while their economic study may contend that there is a lack of incentive to discriminate, the facts with respect to Viacom's licensing of services are these:

- o **Top rate** paid by a cable operator for carriage of the Viacom services MTV, VH-1, and Nickelodeon - $0.60.[1]
- o Estimated rate paid by cable affiliated HTVRO distributor for MTV, VH-1, and Nickelodeon - $2.40.
- o Rate paid by CSS for MTV, VH-1, and Nickelodeon - $3.85.

Thus, while Viacom may argue that it is has no incentive to discriminate and while it may put forward all of the economic studies imaginable, there is no avoiding the fact that CSS, as an independent HTVRO MVPD, is and has been paying rates to Viacom which appear to be extraordinarily high in relation to rates paid by cable systems with fewer subscribers than CSS and by cable affiliated HTVRO distributors.

The Order states that the Commission would revisit the issue of an exemption for programming vendors "to the extent that parties are able to provide information regarding the incentives and past conduct of vendors with de minimus vertical interests". (Order at

IV. CONCLUSION.

Virtually without exception the Petitions for Reconsideration filed by these and